**IN THE HIGH COURT OF UTTARANCHAL,**

**AT NAINITAL.**

**A.O. No. 168/2001**
**(F.A.F.O. No. 219/1995)**

Rakesh Kumar S/o Bhalu Singh,

R/o Village Badhurabad Tahsil and

District Haridwar ..Appellant.

Vs.

1- Amod Kumar S/o Sukhvir Singh
R/o Gurukul Kangri District Haridwar.
2- Mahendra Kumar S/o Mangu Ram
R/o Krishnanagar, Kankhal,
District Haridwar.
3- The New India Insurance Company
Divisional Office, Ranipur Moar,
District Haridwar through its
Divisional Manager ….Respondents.

Sri P.S. Rawat, holding brief for Sri N.C. Gupta,
learned counsel for the appellant.
Sri Bindesh Kumar Gupta, learned counsel for the insurance Co.

**( Hon'ble B.C. Kandpal, J.)**

This appeal, U/S 173 of the Motor Vehicle Act, 1988, has been preferred by the claimant for enhancement, against the judgment and award dated 18-2-1995, passed by District Judge, Haridwar, in M.A.C. Case No. 71 of 1994, Rakesh Kumar Vs. Amod Kumar and others, awarding compensation for a sum of Rs. 15,000/- along with interest @ 12% per annum from the date of petition till the date of actual payment, payable by the O.P./New India Assurance Company.

2- Brief facts, giving rise to this appeal, are that on 27-4-1994, in the evening, the claimant Rakesh, Telu and Dinesh Kumar were riding on a bicycle. When they reached near water-mill Nalaraad, Bahadarabad, District Haridwar, the truck No. UTL. 3887 coming from Bahadarabad on a high speed dashed the bicycle. Due to this accident the claimant sustained injuries on his head and his right leg was fractured. The claimant at the time of accident was 30 years of

age and he was earning Rs. 3000/- per month from the farming work. According to him he spent about Rs. 50,000/- on his treatment. Telu also sustained injuries in the accident, while the other rider Dinesh Kumar died in the way while he was being brought to the hospital. The claimant filed the claim petition U/S 166 of the Motor Vehicle Act for compensation.

3- The O.P. Nos. 1 and 2, the owners of the offending truck filed their W.S. before the Tribunal and denied the accident. According to them their truck did not involve in the accident. On the date of the accident the truck was doing the earth-loading work at B.H.E.L., Ranipur. It was also alleged that the truck in question was insured with New India Insurance Company, hence they have no liability to pay any compensation.

4- The O.P. No.3, New India Insurance Company has filed its W.S. and admitted the insurance of the truck in question. It was also asserted that the claimant did not sustain injuries in the accident. The age and income of the claimant was also disputed. It was also pleaded that the driver of the offending truck was not having a valid driving licence at the time of the accident.

5- On the basis of the pleadings of parties, the Tribunal framed the following issues in the claim petition:-

1- Whether the applicant sustained injuries in the accident?.
2- Whether the accident has occurred due to the rash and negligence of the driver of truck No. UTL 3887?.
3- Whether the applicant is entitled to receive the compensation? If so, how-much and from which of the opposite parties?.

6- Thereafter, the claimant Rakesh produced himself as P.W. 1 and also filed documentary evidence in support of his claim. The opposite parties did not adduce any evidence in the claim petition. The Tribunal on appreciation of evidence on record and hearing

learned counsel for the parties, partly allowed the petition and awarded compensation of Rs. 15,000/- alongwith interest @ 12% per annum from the date of petition till the date of actual payment. The Tribunal also directed that the compensation shall be paid by the New India Insurance Company.

7- Being dissatisfied with the amount of compensation, the claimant has preferred the appeal for enhancement before the Allahabad High Court, which has been transferred to this court, after creation of new State.

8- Heard learned counsel for the parties and perused the record.

9- The only question for determination in this appeal arises is – whether the compensation awarded by the Tribunal is adequate or not?.

10- The claimant Rakesh, has produced himself as P.W.1 and has deposed that he spent about Rs. 50,000/- on his treatment and due to the injuries, he cannot do the farming work properly. In the accident there was fracture of shaft femur (right). The injured also remained under plaster for quite some time. The medical certificates and cash memos of purchase of medicines have also been filed by the claimant on record. The cash memos are of the value of about Rs. 8,000/-. The Tribunal has awarded Rs. 10,000/- towards medical expenses and Rs. 5000/- for mental and physical pain and suffering. No amount for future expectancy and financial loss has been awarded. The claimant has deposed that due to the injuries sustained by him in the accident, he cannot do the farming work. In my opinion, in the facts and circumstances of the case, the claimant/appellant should be awarded the compensation of Rs. 8,000/- towards medical expenses; Rs. 5,000/- for physical and mental pain and suffering and Rs. 5,000/- for future expectancy and financial loss, total Rs. 18,000/-.

11- In view of above, the appeal is liable to be partly allowed.

12- Accordingly the appeal is partly allowed. The impugned judgment and award dated 18-2-1995 is modified upto the extent that the claimant/appellant shall be entitled to get compensation for Rs. 18,000/- instead of Rs. 15,000/-, as awarded by the Tribunal, payable by the New India Assurance Company, along with interest at the rate indicated by the Tribunal in the impugned judgment and award. No order as to cost.

**(B.C. Kandpal, J.)**

Dated: 20-12-2006
ISB